



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2020-0239; FRL-10597-02-R9]

#### Air Plan Actions; Nevada; Clark County – Department of Environment and Sustainability; Stationary Source Permits

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is finalizing an approval, a partial approval and partial disapproval, and a limited approval and limited disapproval of certain revisions to the Clark County portion of the Nevada State Implementation Plan (SIP). These revisions primarily concern the Clark County Department of Environment and Sustainability’s (“DES” or “Department”) general definitions rule and New Source Review (NSR) permitting program for new and modified sources of air pollution under the Clean Air Act (CAA or “Act”).

**DATES:** This rule is effective on **[Insert date 30 days after date of publication in the *Federal Register*]**.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2020-0239. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, *e.g.*, Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR**

**FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Laura Yannayon, EPA Region IX, Air-3-2, 75 Hawthorne St., San Francisco, CA 94105, (415) 972-3534, [yannayon.laura@epa.gov](mailto:yannayon.laura@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us” and “our” refer to the EPA.

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### **I. Proposed Action**

On February 2, 2023, the EPA proposed an approval, a partial approval and partial disapproval, and a limited approval and limited disapproval of four rules listed in Table 1 into the Clark County portion of the Nevada State Implementation Plan (SIP), and proposed to rescind from the Nevada SIP one rule listed in Table 1, as discussed below.<sup>1</sup>

**Table 1 – Submitted Rules**

<b>Section</b>	<b>Section Title</b>	<b>Adopted</b>	<b>Cover Letter Date</b>	<b>Submittal Date</b>
0	Definitions	7/20/21	1/31/22	1/31/22
10	Compliance Schedules (Request to rescind)	12/18/18	6/6/19	6/10/19
12.0	Applicability and General Requirements	1/21/20	3/13/20	3/16/20
12.1	Permit Requirements for Minor Sources	12/18/18	4/12/19	4/12/19
12.11	General Permits for Minor Stationary Sources	12/18/18	4/12/19	4/12/19

The submitted rules are intended to update the Nevada SIP with recent revisions to the Department’s Air Quality Regulations. See our notice of proposed rulemaking and Technical

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<sup>1</sup> 88 FR 7046. Table 1 lists the submitted rules addressed by this action, including the dates on which they were adopted by the Clark County Board of County Commissioners, and the dates on which they were submitted by the Nevada Division of Environmental Protection to the EPA.

Support Document (TSD) for additional information about the submitted rules and our evaluation of them.

In our proposed action, we proposed partial approval and partial disapproval of Section 0, because the revisions to the rule were approvable, except that the submitted rule removed a definition for “Clearing and Grubbing”, a term still used in the SIP. Therefore, we proposed to retain in the SIP the definition of “Clearing and Grubbing” from the current SIP-approved version of Section 0. We also proposed approval of the request to rescind Section 10 from the SIP, because the rule has been repealed locally and is no longer relevant. In addition, we proposed full approval of Section 12.0 because we determined that the revisions to the rule satisfy the applicable statutory and regulatory provisions governing regulation of stationary sources under CAA section 110(a)(2)(C).

We also proposed a limited approval and limited disapproval of Sections 12.1 and 12.11, because we determined that these rules mostly satisfy the applicable statutory and regulatory provisions governing regulation of stationary sources under CAA section 110(a)(2)(A) and (C), but they do not satisfy all of these requirements. Specifically, we identified the following six deficiencies. First and second, the provisions in Sections 12.1.2(c)(7) and (8), which exempt ancillary parts washers and degreasers that use only certified clean air solvents from permitting requirements, are deficient because the term “certified clean air solvents” is not defined in any Section 12 series rule, which makes the provision unenforceable. Third, the provision in Section 12.1.2(c)(10) allowing the Control Officer to deem any other emission unit or activity to be insignificant on a case-by-case basis with no specific criteria for making this determination is deficient because it contains impermissible Director’s discretion. Fourth, the provision in Section 12.1.4.1(z) contains impermissible Control Officer discretion to decide whether certain conditions should be added to portable minor source permits. Fifth, Section 12.11 contains an unenforceable cross-reference relating to certain emissions inventory report requirements, and sixth, Section 12.11 does not satisfy the requirement in 40 CFR 51.160(f) that the screening

model used pursuant to Section 12.11.1(f) be based on the applicable models, databases, and other requirements specified in 40 CFR part 51, appendix W.

## **II. Public Comments**

The EPA's proposed action provided a 30-day public comment period. During this period, no comments were submitted regarding our proposal.

## **III. EPA Action**

No comments were submitted that change our assessment of the rules as described in our proposed action. Therefore, as authorized in section 110(k)(3) and 301(a) of the Act, the EPA is finalizing our action as proposed. Specifically, the EPA is finalizing an approval of the request to rescind Section 10 from the SIP, an approval of Section 12.0, a partial approval and partial disapproval of Section 0, and a limited approval and limited disapproval of Sections 12.1 and 12.11. This action incorporates the submitted rules (except Section 10) into the Clark County portion of the Nevada State Implementation Plan (SIP), including those provisions identified as deficient.

A portion of this approval is limited because EPA is simultaneously finalizing a limited disapproval of Sections 12.1 and 12.11 under section 110(k)(3). Our limited disapproval action triggers an obligation for the EPA to promulgate a Federal Implementation Plan (FIP) unless the State corrects the deficiencies, and the EPA approves the related plan revisions, within two years of this final action. The EPA intends to work with the Department to correct the deficiencies in a timely manner.

Note that Sections 12.1 and 12.11 have been adopted by the Department, and the EPA's final limited disapproval does not prevent the local agency from enforcing these rules. The limited disapproval would also not prevent any portion of the rule from being incorporated by reference into the federally enforceable SIP, as discussed in a July 9, 1992 EPA memo found at: <https://www.epa.gov/sites/production/files/2015-07/documents/procsip.pdf>.

We note for clarity that, with this final action, the version of Section 0 listed in Table 1

will be approved into the SIP, and a separate entry for the definition of “Clearing and Grubbing” from the current SIP-approved version of Section 0, approved into the SIP on October 17, 2014, will be retained in the SIP. Therefore, our partial disapproval action for Section 0 will require no further action from the Department to remedy the identified deficiency. More generally, the incorporation of the submitted version of Section 0 into the SIP will replace the older version of Section 0 that had been in the SIP, except for the definition of “Clearing and Grubbing”; that older version of Section 0 is being removed from the SIP (except for the specified definition). In addition, our approval of certain definitions in the submitted version of Section 0 will replace in the SIP the older versions of those same definitions that are currently included in SIP-approved Section 1; these older versions of the definitions are being removed from the SIP. Similarly, with our approval into the SIP of the versions of Sections 12.0 and 12.1 listed in Table 1, this action removes the older versions of these rules that had been in the SIP. Our proposed rule and TSD provide more information in this regard.

#### **IV. Incorporation by Reference**

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is incorporating by reference the following Clark County DES rules: Sections 0, 12.0, 12.1 and 12.11, as described in Table 1 of this notice concerning definitions and New Source Review permit program requirements. The EPA has made, and will continue to make, these materials available through <https://www.regulations.gov> and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this notice for more information).

Also in this document, as described in the amendments to 40 CFR part 52 set forth below, the EPA is removing provisions from the EPA-approved rules for the Clark County portion of the Nevada SIP, which is incorporated by reference in accordance with the requirements of 1 CFR part 51.

## **V. Statutory and Executive Order Reviews**

Additional information about these statutes and Executive orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

### *A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

### *B. Paperwork Reduction Act (PRA)*

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by state law.

### *C. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law.

### *D. Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, will result from this action.

### *E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

### *F. Executive Order 13175: Coordination with Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175,

because the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

*G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks*

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not impose additional requirements beyond those imposed by state law.

*H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act (NTTAA)*

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

*J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as “the fair

treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to review state choices, and approve those choices if they meet the minimum criteria of the Act. Accordingly, this final action addresses whether the relevant state rule submittals meet federal requirements and does not impose additional requirements beyond those imposed by state law.

Clark County DES did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of Executive Order 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

#### *L. Congressional Review Act (CRA)*

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

#### *M. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action



must be filed in the United States Court of Appeals for the appropriate circuit by [**insert date 60 days after date of publication in the *Federal Register***]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

#### **List of Subjects in 40 CFR Part 52**

Administrative practice and procedure, Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

**AUTHORITY:** 42 U.S.C. 7401 *et seq.*

Dated: June 6, 2023.

Martha Guzman Aceves,  
*Regional Administrator,*  
*Region IX.*

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

#### **PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

#### **Subpart DD – Nevada**

2. In § 52.1470, paragraph (c), table 3 is amended by:

a. Removing the entry for “Section 0” and adding two new entries for “Section 0” in its place;

b. Removing the entries for “Section 1 (“Definitions”): Subsection 1.1”, “Section 1 (“Definitions”): Subsection 1.26”, “Section 1 (“Definitions”): Subsection 1.29”, “Section 1 (“Definitions”): Subsection 1.36”, “Section 1 (“Definitions”): Subsection 1.51”, “Section 1

(“Definitions”): Subsection 1.57”, “Section 1 (“Definitions”): Subsection 1.95” and “Section 10”.

c. Revising the entries for “Section 12.0” and “Section 12.1”; and

d. Adding an entry for “Section 12.11” after the entry for “Section 12.9.1”.

The additions and revisions read as follows:

**§ 52.1470 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

**Table 3—EPA-Approved Clark County Regulations**

<b>County citation</b>	<b>Title/Subject</b>	<b>County effective date</b>	<b>EPA Approval date</b>	<b>Additional explanation</b>
Section 0	Definitions	8/3/21	[Insert <i>Federal Register</i> citation], [Insert date of publication in the <i>Federal Register</i> ]	Submitted electronically on January 31, 2022, as an attachment to a letter dated January 31, 2022.
Section 0	Definitions (“Clearing and Grubbing” only)	4/1/14	79 FR 62351, 10/17/14	Amended by Clark County Board of County Commissioners on March 18, 2014 through Ordinance No. 4189. Submitted by NDEP on 4/1/14.
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Section 12.0	Applicability and General Requirements	2/4/20	[Insert <i>Federal Register</i> citation], [Insert date of publication in the <i>Federal Register</i> ]	Submitted electronically on March 16, 2020, as an attachment to a letter dated March 13, 2020.
Section 12.1	Permit Requirements for Minor Sources	1/1/19	[Insert <i>Federal Register</i> citation], [Insert date of publication in the <i>Federal Register</i> ]	Submitted electronically on April 12, 2019, as an attachment to a letter dated April 12, 2019.

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Section 12.11					General Permits for Minor Stationary Sources					1/1/19					[Insert <i>Federal Register</i> citation], [Insert date of publication in the <i>Federal Register</i> ]					Submitted electronically on April 12, 2019, as an attachment to a letter dated April 12, 2019.									
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[FR Doc. 2023-12490 Filed: 6/13/2023 8:45 am; Publication Date: 6/14/2023]